

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6140 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DALSUKHBHAI SOMABHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR PATEL, AGP, for Respondents No. 1, 2 & 3

MS DAWAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/11/1999

ORAL JUDGEMENT

#. The District Magistrate, Panchmahals, at Godhra, by order dated 4th August, 1999 passed in exercise of power under the provisions of Black Marketing and

Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act") detained the present petitioner. The grounds for detention indicate that the detaining authority was subjectively satisfied about the involvement of the petitioner in malpractices relating to controlled supply of wheat, rice and kerosene. The detaining authority was satisfied that he had manipulated the ration cards, accounts, bills, etc. The detaining authority also considered an earlier incident of suspension of the petitioner's licence by the District Supply Officer by order dated 25th October, 1994. The detaining authority, while considering the possibility of alternative less drastic remedy, observed that even if the licence of the petitioner is suspended or cancelled, there is a provision of appeal and revision against that order and, therefore, it does not become possible to prevent the petitioner from continuing his illegal activities and, ultimately, came to conclusion that detention is the only remedy for preventing the petitioner from pursuing the illegal activity.

#. The petitioner has approached this Court with this petition under Article 226 of the Constitution by raising various contentions.

2.1 The contention on which much reliance was placed by learned Advocate Mr. Prajapati for the petitioner is that the subjective satisfaction recorded by the detaining authority is vitiated since the detaining authority has failed to take into consideration the important aspect while passing the order. The aspect is that the petitioner's licence was already cancelled by the detaining authority itself in exercise of powers under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, by order dated 24th February, 1997. The petitioner, therefore, could not have carried on the so called illegal activity and, therefore, the order of detention is bad.

2.2 Mr. Prajapati, while restricting his argument to the above point, submitted that the petitioner had undertaken all the exercise of making the order of cancellation of licence ineffective, but had failed before the detention order came to be passed. The petitioner, therefore, could not have carried on the illegal activity as the licence itself was cancelled and, consequently, the supplies also would be stopped. This aspect has not been considered by the detaining authority while passing the order and, therefore, the order of detention is bad, the petition may be allowed and the petitioner may be directed to be set at liberty.

#. Mr. Patel, learned Assistant Government Pleader appearing for respondents No.1, 2 and 3 submitted that the detaining authority has taken into consideration all the relevant aspects. The authority was subjectively satisfied that there was no alternative but to detain the present petitioner. He submitted that the detaining authority has considered the possibility of cancelling the licence and came to conclusion that, that would not serve the purpose as has been recorded in the grounds of detention. The petition, therefore, may be dismissed.

#. There is no dispute regarding following factual aspects:

4.1 The licence of the petitioner came to be cancelled by the detaining authority itself by order dated 24th February, 1997 in exercise of powers under Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. The said order was challenged in revision before the State Government and the State Government dismissed the revision vide order dated 13th January, 1999. The petitioner, therefore, preferred Regular Civil Suit No. 39 of 1999 in the Court of learned Civil Judge (S.D.), at Godhra, for declaration and permanent injunction. An application for interim injunction was also preferred. The Court did not grant any stay against the impugned orders, but granted status quo. However, after hearing the other side, the Civil Court, ultimately, dismissed the application for interim injunction by order dated 17th February, 1999. An appeal was preferred against that order before the District Court being Civil Misc. Appeal No.19 of 1999. The said appeal came to be dismissed by judgment and order dated 15th July, 1999. Aggrieved by the said judgment, the petitioner approached this Court by preferring Civil Revision Application No.1119 of 1999 and this Court, while admitting the revision application by order dated 20th July, 1999, refused to grant any stay. The detention order came to be passed on 4th August, 1999.

#. It is, therefore, clear that the licence of the petitioner was cancelled by the detaining authority on 24th February, 1998, which remained effective till the detention order was passed although it travelled through a legal battle. There was no stay of that order by either Civil Court or High Court and when the order of detention came to be passed, the cancellation order had attained finality. As such, there was no question of the petitioner continuing with his malpractices or illegal activities on the date of the order of detention because

there was no valid licence existing in favour of the petitioner at the time when the detention order came to be passed. This aspect has not been considered by the detaining authority while passing the order of detention because in the grounds of detention all that is considered by the authority is that if the licence is suspended or cancelled, there are provisions of appeal and revision and, therefore, it is not possible to prevent the petitioner from continuing with his illegal activities, whereas, in fact, at that point of time, the entire exercise of appeal, revision, etc. was over and the order of cancellation of licence had attained finality. The authority has overlooked this aspect and the order is passed as if the licence is yet to be cancelled and if that is done, the procedure of appeal and revision may come in the way of the detaining authority. This reflects that this ground or consideration by the authority is in the nature of a casual or mechanical mention of it if not a non-application of mind. The detention order, therefore, would stand vitiated. The subjective satisfaction about resorting to less drastic alternative remedy is also vitiated and, therefore, the order impugned in this petition deserves to be quashed and set aside.

#. In view of the above discussion, the petition is allowed. The order of detention dated 4th August, 1999 passed by the District Magistrate, Panchmahals, at Godhra, detaining the petitioner-Dalsukhbhai Somabhai Baria is hereby quashed and set aside. The petitioner is ordered to be released forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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